

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Harrah's Atlantic City Operating Company LLC)	File No.: EB-10-PA-0099
)	
Atlantic City, New Jersey)	NAL/Acct. No.: 201132400006
)	
)	FRN: 0017250283

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 7, 2011

Released: April 7, 2011

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Harrah's Atlantic City Operating Company LLC ("Harrah's"), former licensee of Industrial/Business Pool Radio Station WSZ911 in Atlantic City, New Jersey, apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for apparent willful and repeated violation of section 301 of the Communications Act of 1934, as amended ("Act")¹ and sections 1.903(a) and 1.949(a) of the Commission's rules ("Rules").² The noted apparent violations involve Harrah's operation of Station WSZ911 without Commission authority, and its failure to timely file a renewal application for the station for almost ten years.

II. BACKGROUND

2. On April 8, 2010, agents in the Enforcement Bureau's Philadelphia Office ("Philadelphia Office") conducted routine monitoring of several paging frequencies in the Atlantic City area and observed an unlicensed station operating on 462.800 MHz. The agents used direction-finding techniques to locate the source of the transmissions on 462.800 MHz to the roof of Harrah's Resort Atlantic City, 777 Harrah's Boulevard, Atlantic City, New Jersey. The same day, the agents inspected the radio transmitting equipment operated by Harrah's and confirmed that the transmitter was operating on the frequency 462.800 MHz. According to the Commission's records, Harrah's previous license to operate the 462.800 MHz paging system under the call sign WSZ911 had expired on December 13, 2000.

3. On May 3, 2010, the Philadelphia Office issued a letter of inquiry ("LOI").³ In its response to the LOI, Harrah's admits that it failed to renew its license for station WSZ911 after it expired on December 13, 2000.⁴ Harrah's also concedes that, notwithstanding being notified of the unlicensed

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 1.949(a).

³ See Letter from Gene Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, to Harrah's Atlantic City, dated May 3, 2010.

⁴ See Letter from N. Lynn Hughes, Assistant Secretary, Harrah's Atlantic City Operating Company, LLC, to Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, dated June 4, 2010 ("LOI Response").

operation at the time of the inspection on April 8, 2010, it did not file a license application to operate on 462.800 MHz until after its receipt of the LOI, and that it continued to operate on the unauthorized frequency after the agents' inspection.⁵ However, Harrah's requests that the Commission excuse the unauthorized operation because: (1) its failure to renew the license for operation on 462.800 MHz was inadvertent; (2) the unlicensed operation did not cause any harmful interference; and (3) Harrah's corrected the situation immediately upon notification by the FCC.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁷ The legislative history to section 312(f)(1) clarifies that this definition of willful applies to both sections 312 and 503(b)⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹¹

5. Section 301 of the Act and section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission granted authorization.¹² Additionally, section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."¹³ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁴

⁵ According to the Commission's records, Harrah's filed an application on May 27, 2010 seeking authorization to operate the 462.800 MHz paging system in Atlantic City, New Jersey. See File No. 0004263119. On June 9, 2010, the Commission granted the application and assigned the station the new call sign WQLZ979.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms ...").

⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹¹ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹² 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹³ 47 C.F.R. § 1.949(a).

¹⁴ 47 C.F.R. § 1.955(a)(1).

6. On April 8, 2010, agents determined that Harrah's operated radio transmission equipment on the frequency 462.800 MHz without a valid license. Harrah's admitted that it failed to renew its license and had continued to operate without authorization even after its license for Station WSZ911 expired at the end of 2000. Based on the evidence before us, we find that Harrah's apparently willfully and repeatedly violated section 301 of the Act and section 1.903(a) of the Rules by operating radio transmitting equipment on the frequency 462.800 MHz without a license, and that it violated section 1.949(a) of the Rules by failing to timely file a renewal application for Station WSZ911.

7. We disagree with Harrah's claim in its response to the LOI that we should refrain from taking enforcement action in light of several mitigating circumstances. First, Harrah's claims that its failure to renew its license was inadvertent.¹⁵ It is well-established Commission policy that inadvertence is not a mitigating circumstance.¹⁶ As a Commission licensee, Harrah's is charged with the responsibility of knowing and complying with the terms of its authorization. Second, Harrah's claims that enforcement action is not warranted because its unauthorized operation did not cause interference to other licensees.¹⁷ It is an equally well-established Commission policy that the absence of public harm does not justify abstaining from enforcement action.¹⁸ Similarly, we will not refrain from taking enforcement action based on any corrective actions Harrah's took *after* the agents' inspection on April 8, 2010.¹⁹ The Commission consistently has stated that "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."²⁰ Moreover, Harrah's concedes that it had not even applied for a license until after receipt of the LOI.²¹

8. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.²² Although we find no basis here for a downward adjustment given the circumstances of this case, we conclude that an upward adjustment of the total \$13,000 base forfeiture is warranted.²³ In this regard, we take into account the fact that Harrah's unlawful operation continued for

¹⁵ LOI Response at 1.

¹⁶ See, e.g., *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387 (1991) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

¹⁷ LOI Response at 2.

¹⁸ See, e.g., *Pacific Western Broadcasters, Inc.*, 50 FCC 2d 819 (1975); see also *Mobile Relay Associates*, Memorandum Opinion and Order, 23 FCC Rcd 8394 (Enf. Bur. 2008) (citing *Lockheed Martin Corporation*, Memorandum Opinion and Order, 22 FCC Rcd 4116, 4119 (Enf. Bur. 2007)).

¹⁹ LOI Response at 1.

²⁰ See, e.g., *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (2002) (finding that remedial action to correct the violation at issue was not a mitigating factor and noting that all licensees and Commission regulates are expected to promptly take corrective action when violations are brought to their attention). See also *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994) (corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations).

²¹ LOI Response at 1.

²² 47 C.F.R. § 1.80(b). See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17099 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act"), *recon. denied*, 15 FCC Rcd 303 (1999).

²³ See *BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17303 ¶ 11 (Enf. Bur. 2010).

almost ten years.²⁴ Thus, based on all the factors and evidence, including the extended period of unauthorized operation, we conclude that a proposed aggregate forfeiture of \$15,000 is appropriate.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Harrah's Atlantic City Operating Company LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violation of section 301 of the Act and sections 1.903(a) and 1.949(a) of the Rules.²⁵

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Harrah's Atlantic City Operating Company LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Harrah's Atlantic City Operating Company LLC shall send electronic notification on the date said payment is made to NER-Response@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall also be sent to NER-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the

²⁴ See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section II. Adjustment Criteria for Section 503 Forfeitures* (establishing "repeated or continuous violation" as an upward adjustment factor).

²⁵ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903(a), 1.949(a).

²⁶ See 47 C.F.R. § 1.1914.

financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Harrah's Atlantic City Operating Company LLC at 777 Harrah's Boulevard, Atlantic City, New Jersey, 08401 and to Harrah's Law Department c/o Bally's Atlantic City, Attn: VP of Legal Affairs & Chief Legal Officer, Park Place & Boardwalk, Atlantic City, New Jersey 08401.

FEDERAL COMMUNICATIONS COMMISSION

Gene Stanbro
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau